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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1975 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

RANCHHODBHAJ I CHAUHAN

Versus

MANAGER

Appearance:

MR RM PARMAR for Petitioner

NOTICE SERVED for Respondent No. 1

MRS DAWAWALA for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 21/08/98

CAV JUDGEMENT

Rule. Mrs. Dawawala, learned advocate for the respondent waives service of notice of rule.

2. The petitioner-Ranchhodbhai I. Chauhan has filed the present petition to challenge the order passed by the Labour Court of Anand in Reference No.44/92 (Original Reference No.62/85), which has been confirmed by the Industrial Tribunal on 26.9.96 by dismissing his appeal.

3. The petitioner was working as a workman with Shubha Laxmi Mills Private Ltd., Khambat for nearly 20 years. The incident in question is alleged to have taken place on 9.8.85. It was alleged against the present petitioner that on 8.8.1985 he had assaulted a co-worker by using a iron bar within the factory premises of the Mill. On account of the said charge, he was suspended on 9.8.1985, and then a departmental enquiry proceedings was initiated against him and on finding that the charge levelled against him was proved he was dismissed from service. He, therefore, raised an industrial dispute resulting into Reference No.62/85 which was given Reference No.44/92 on establishment of Labour Court, Anand.

4. It is case of the present petitioner that as a matter of fact the co-worker Keshavbhai Punjabhai though was under order of suspension had entered in the factory premises at the time of incident. It is his further claim that said Keshavbhai Punjabhai was abusing him and teasing him and though he was trying to go away from Keshavbhai Punjabhai, Keshavbhai Punjabhai was following him and was teasing him. Thereafter the incident in question took place no doubt he does not accept that he had assaulted said Keshavbhai Punjabhai.

5. In the departmental enquiry, it was found that the petitioner had assaulted Keshavbhai Punjabhai was beaten by iron bar. On appreciation of the material produced during the departmental inquiry, he was found guilty of conduct alleged against him. The Labour Court also agreed with the finding of the inquiry officer and he also formed an opinion that the misconduct committed by the petitioner was proved. The Labour Court had also concurred with the order of punishment. He, therefore, rejected the reference. The petitioner preferred an appeal in the Industrial Tribunal but the same was dismissed by maintaining the order of Labour Court and hence, he has come before this court.

6. The Labour Court has write an exhaustive judgment and if the said judgment of the Labour Court is

considered, then it would be quite clear that during the departmental enquiry, it was brought out in the evidence of the witnesses that the claim of the petitioner that Keshavbhai Punjabhai was under order of suspension and in spite of that he had entered in the factory premises. It has also further come in the cross-examination that said Keshavbhai Punjabhai was abusing and teasing the present petitioner, and that the petitioner was trying to avoid said Keshavbhai Punjabhai by going away from him but Keshavbhai was following the petitioner wherever he was going and continued to abuse him and tease him. Now when the said material has come in the evidence, the action of the present petitioner in assaulting the said Keshavbhai will have to be borne in mind in the said background. The said background could not be ignored and only his action of assaulting Keshavbhai alone could not be taken into consideration because of the said background the gravity of the action of the petitioner reduces and that aspect will have to be taken into consideration. Therefore if that aspect is taken into consideration then it could not be said that the petitioner-workman had committed such a grave offence so as to justify the order of dismissal. Therefore taking into consideration the said background of the incident, I hold that the order of dismissal passed by the disciplinary authority and maintained by the Labour Court as well as Industrial Tribunal will have to be set aside. No doubt the conduct committed by the petitioner of assaulting a workman with iron bar could not be taken as a conduct without awarding any punishment to him. Therefore he could not be granted direct reinstatement with all backwages. Admittedly, the Company in question was closed, therefore, there is no question of granting the reinstatement in favour of the petitioner. The petitioner has put in 20 years as per his own plaint and when the petitioner itself had stated that the said company has gone in liquidation and was closed, the person who had put in 19 years service was paid compensation of Rs.1 lakh, therefore, taking into consideration the said fact, I hold that the petitioner should be paid compensation of Rs.1 lakh and 12% interest thereon from 14.10.96.

7. Thus, I hold that the present petition will have to be partly allowed. The order of the Labour Court passed in Reference No.44/92 on 24.1.96 is set aside and in its place the following order is passed.

Instead of the order of punishment of dismissal from service, the workman Ranchhodhai I. Chauhan is to be discharged with a payment of compensation of Rs.1 lakh and 12% interest thereon from 14.10.96 and he would be

entitled to get all other benefits like provident fund etc.

8. The Rule is made absolute in the above terms. In the circumstances of the case, the parties are directed to bear their respective costs.

syed*